

BEFORE THE ODISHA SALES TAX TRIBUNAL (FULL BENCH), CUTTACK

S.A.No. 1494/2002-03

(Arising out of order of the 1d.ACST, Koraput Range, Jeypore, in
Appeal No. AA(KOII)155/2001-2002,
disposed of on dtd.31.08.2002)

P R E S E N T :

Sri Sashikanta Mishra Sri S. Mohanty & Sri P.C. Pathy
Chairman Judicial Member-II Accounts Member-I

State of Orissa, represented by the
Commissioner of Sales Tax,
Orissa, Cuttack ... Appellant

-Versus -

M/s. Arora Packwell & Arora
Industries, Kadambariguda. ... Respondent

Appearance :

For the Appellant ... Mr. M.S. Raman, Addl. Standing Counsel (C.T.)
For the Respondent ... Mr. N. Anand Rao, Authorised Representative

Date of Hearing: 03.05.2018 Date of Order: 04.05.2018

ORDER

This tax appeal is preferred by the Revenue against a reversing order of the learned First Appellate Authority/Asst. Commissioner of Sales Tax, Koraput Range, Jeypore (in short, FAA/ACST) in First Appeal Case No. AA(KOII)155/2001-2002.

2. The instant dealer is a manufacturer of corrugated boxes and paper tubes having two units within the jurisdiction of Sales Tax Officer, Koraput-II Circle, RGDA, Ward-A (in short, STO) under the name and style of M/s. Arora Packwell & Arora Industries under one registration certificate. It being a SSI Unit accorded with P.M.T. Registration under D.I.C., Rayagada commenced commercial production on 19.10.1994. In a proceeding u/s.12(4) of the OST Act for the tax period 1997-98, the AO

found that the dealer's unit being located in Zone-B is entitled for exemption of tax with ceiling upto 75% of the fixed capital investment under IPR, 1992. The dealer was found to have invested fixed capital in land, building and machinery to the tune of Rs.9.01 lakh initially, which was subsequently enhanced to 10.72 lakhs and finally enhanced to Rs.21.32 lakhs. Thus, the dealer was found to have invested fixed capital phasewise in three phases. AO accepted only Rs.9.01 lakhs, the initial investment as fixed capital investment, which was supported with original circular issued by DIC, Rayagada bearing No.2522 dtd.07.10.1994 as the amount taken for calculation for exemption from tax i.e. upto 75% as per the IPR, 1992. However, he declined to consider the additional investments made by the dealer as aforesaid for tax exemption under the said IPR, 92. Accordingly, he determined the tax liability of the dealer and raised demand of Rs.5,36,055/-.

3. Being aggrieved, the dealer preferred appeal before the FAA, who in turn, considered and accepted the eligibility certificates issued by the DIC on three occasions covering the total investment of 21.32 lakhs as claimed by the dealer and allowed the exemption on the entire amount under IPR, 92. When the tax exemption was thus extended to additional investments in the impugned order, the Revenue has preferred this appeal on the ground that, the additional capital investment by the dealer are not in accordance with the original project report. So, the dealer is not eligible for tax exemption on such additional investments. Accordingly, Revenue has prayed for restoration of order of the AO by setting aside the impugned order.

4. The appeal is heard with cross objection filed by the dealer, whereby the dealer supported the impugned order on the plea that, when the DIC has categorically issued letter giving clarification to the taxing authority to the extent that, the entire amount of Rs.21.36 lakhs should be treated as capital investment covered under the scheme of IPR, 92, the

taxing authority has no authority under law to interpret the additional investments as not being included in the term fixed capital.

5. At the outset, learned authorized representative of the dealer draws attention of the forum to the three letters; Letter No.2522/dtd.7.10.94, Letter No.1014/dt.19.5.1995, Letter No.1985/dt.3.9.97 issued by the DIC, Rayagada. Under IPR, 92 sales tax incentives are provided to new, small, medium and large industrial units for expansion, modernization, diversification of industrial units after the effective date i.e. 1st Aug, 1992 and such benefit is available for a period of 5 years subject to ceiling of 75% of the fixed capital investments since the dealer's unit situates under Zone-B. Fixed capital investment means investment in land, building, plant, machinery and other equipments of permanent nature of a SSI Unit. The dealer unit commenced commercial production on 19.10.1994. As such, the investment/additional investments in question made by the dealer are well within the said period of 5 years. Further, in response to the request for clarification made by taxing authority on IPR, General Manager, D.I.C., Rayagada vide it's letter dtd.17.08.2001 has categorically intimated that, the investment by the dealer in phasewise manner should be treated as fixed capital investment covered under the benefit of IPR, 92.

6. Learned Counsel for the dealer argued that, for the successive tax period, the Revenue has acted upon the said letter of the DIC and allowed the additional investment by the dealer covered under IPR exemption. Though, the subsequent tax period and assessment thereof has no bearing but in the peculiarity of the case in hand when the eligibility for exemption in IPR, 92 is covered upto 5 years and while calculating the exemption the upper ceiling is 75% of capital investment, the entire period of 5 years in a block is required to be taken into consideration as otherwise, the computation of exemption and tax liability will be contradictory and incorrect one. Consistency is a rule in taxation laws. In the totality of the facts and circumstances mentioned above, when

the letters of clarification issued by the DIC are considered with the conditions in IPR, 1992 inasmuch as the terms, expenses, modernization, diversification of industrial units after the effective date 1st August, 1992, if applied to the case in hand, it can safely be said that, the additional investments phasewise within the stipulated period by the dealer in this case, are covered under the eligibility criteria of IPR, 92. In such view of the matter, we find no illegality or infirmity in the impugned order passed by the FAA. Resultantly, it is held that, the impugned order calls for no interference. Hence, ordered.

The appeal being devoid of merit, is dismissed on contest.

Dictated & corrected by me,

Sd/- (S. Mohanty) 2 nd Judicial Member	Sd/- (S. Mohanty) 2 nd Judicial Member
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I agree,

Sd/-
(Sashikanta Mishra)
Chairman

I agree,

Sd/-
(P.C. Pathy)
Accounts Member-I